D.B. CIVIL SPECIAL APPEAL (WRIT) NO.367/2007
Executive Engineer, Banswara Vs. Jalu & Ors.

Date : 22.03.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. L.R. Upadhyay, Dy. Government Advocate.
Mr. Ravinder Singh for the respondents.

We heard the learned counsel for the parties on merit of the appeal.

This appeal is directed against the judgment of learned Single Judge dated 28th August, 2006 dismissing the writ petition filed by the appellant challenging the award made by the Labour Court, Udaipur dated 10th Sept., 2004 in Labour Case No.160/1995.

The dispute arose in the circumstances that the services of the respondents No.1 to 10 along with certain more persons were terminated which was made subject matter of an industrial dispute referred to the Labour Court, Udaipur.

The Labour Court found the retrenchment to be invalid being in violation of Section 25-F and 25-G of the Industrial Disputes Act, 1947 because the persons who were appointed after the respondent-workmen and who are the respondents before us were allowed to continue in service while services of workmen-respondents were brought to an end. On this premises the termination of the services of respondents were found to be invalid and the directions were issued to reinstate the workmen with 20% back wages.

So far as the challenge to order of reinstatement is concerned, suffice it to say that it was not merely on the ground of technical breach of provisions of Section 25-F but for the substantial ground of breach of Section 25-G, the object of which lay in Article 14 and 16 of the Constitution protecting the fundamental rights of equality before law and equality of opportunity in the matter of employment of every citizen. While the persons junior to the respondent-workmen were allowed to continue in service and are

still continuing in service, to keep the respondent-workmen out of employment, who were recruited prior to retained employees would have resulted in perpetual violation of respondents' fundamental rights of equality of opportunity in the matter of employment. When termination of the services is claimed to be simplicitor without any special reason, allowing the juniors to continue while terminating the services of seniors does affect the basic principle enshrined under Article 16. Therefore, in these circumstances, the infringement of right of the respondents cannot be viewed to be a mere technical breach in the matter of public employment.

We are, therefore, of the opinion that the learned Single Judge was right in rejecting the prayer for setting aside the order of reinstatement and to substitute it by compensation.

So far as the grant of 20% back wages is concerned, we are satisfied that the delay in raising the dispute and there being sufficient gap in between termination and raising the dispute demand that the grant of back wages is set aside inasmuch as there is

nothing on record to suggest as to what happened during the intermediate period.

However, this will not affect the other consequential benefits of the reinstatement.

The appeal is disposed of.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

babulal/

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.DR(J)6241/2006

Date : 22.03.2007

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. L.R. Upadhyay, Dy. Government Advocate.
Mr. Ravinder Singh for the respondents.

Heard learned counsel for the parties.

The appeal is delayed by 23 days. Having considered the application under Section 5 Limitation Act and the submissions made before us we are satisfied that the appellant was prevented by sufficient cause from filing the appeal within limitation. Accordingly, the application under Section 5 Limitation Act is allowed. The delay in filing the appeal is condoned. The special appeal may now be registered.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

babulal/